IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.271 OF 1989.

Regional Director, Employees
State Insurance Corporation : Appellants.

versus

Texraj Corporation : Respondent.

Mr.R.M.Jaykar i/by M/s. M.V.Jaykar for the appellants.
None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 6th June 2005.

ORAL ORDER

1. Heard advocate for the appellant. The respondent is served. Nobody is present. This appeal is filed by the Employees State Insurance Corporation against the order dated 13th July 1988 of the Employees' State Insurance Court at Bombay allowing the application of the respondent

and giving declaration that the respondent was not liable to be covered as a factory under section 1(5) of the E.S.I. Act 1948 with effect from 11th May 1983 and, it is, therefore, not liable to pay E.S.I. contribution of Rs.2730/- as asked by E.S.I. Authorities.

2. Counsel Mr.Jaykar, appearing for the appellant, contended that when the Insurance Inspector under the ESI Act visited the factory of the respondent on 11th May 1983, as a surprise check without intimation, it was found that 10 persons were working as per the report of the inspector. On the basis of that report, notices were issued to the respondent to produce the documents i.e. pay register, salary register etc. The respondent sought time frequently and ultimately did not produce any document. But the lower Court did not take into consideration this material aspect of the matter and avoidance of the respondent to produce the record even though they were legally bound to maintain or preserve and produce and, came to a wrong conclusion that it is not the factory.

3. I was taken through the judgment of the

lower Court where the lower Court even though disbelieved the case of the respondent that his son who was present at the time surprise inspection on 11th May 1983, was a minor, the lower court erroneously came to a conclusion that the entire burden of proof was on the appellant and they have acted in haste without collecting necessary particulars or information.

4. Compilation of documents produced by Mr.Jaykar shows that on the date of inspection, the inspector noted down the names of ten persons as the names were given by the son of the proprietor as the persons working in the premises on that day. Business of the respondent was plastic moulding spare parts. The owner of the factory tried to contend in his evidence and in his defence that some of ten persons were visitors or some one was coolie i.e. hand cart puller. But Mr.Jaykar also pointed out that when the notices were repeatedly served upon the respondent to produce the material and vital record about the persons employed by the respondent, the respondent was indulging in seeking time on various pretext and ultimately never produced the record. Therefore, Mr.Jaykar

contended that if the factory owner was legally bound to maintain the record of his employees and if he was deliberately and intentionally avoiding to produce the record, then the court should have drawn adverse inference against the respondent instead of attacking the case of the appellant and found faulted with the procedure or steps taken by them.

5. I find considerable force in this submission of Mr.Jaykar. Firstly, the inspector noted 10 names as given to him by Ketan Ashar the son of the proprietor. The proprietor has failed to prove that Ketan Ashar, who gave this information on that day, was a minor. The proprietor could have produced date of birth certificate of Ketan in order to substantiate his case or defence. Admittedly, it is not done because the certificate could have falsified the stand of the proprietor. Therefore when Ketan Ashar has given this information he was fully conscious of the consequence and, therefore, he gave the names of ten persons as working in the premises on that day and when the proprietor at no point of time produced the relevant record i.e. muster roll, salary register of any of the

employees for any period in the past, then this is a fit case to reject the contention of the respondent. The lower Court committed grave mistake in disregarding the case of the appellant and accepting the case of the respondent. The impugned order is therefore perverse. It is liable to be set aside. Hence the appeal is allowed. The impugned order is set aside. No order as to costs.

[D.G.DESHPANDE]

06/06/2005 JUDGE.